THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 30th October, 2006

W.P.Nos.23113 of 2005 and 907 of 2006

W.P.No.23113 of 2005

Between:

R.V. Subash Chandra Bose … Petitioner

and

The Principal Secretary to Government,
Agriculture and Cooperation,
Secretariat, Hyderabad, A.P.
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.23113 of 2005 and 907 of 2006

COMMON ORDER:

In these two Writ Petitions, the petitioner is common and the issue arises for consideration is also one and the same; therefore, they are being disposed of by this common Order.

Writ Petition No.23113 of 2005 is filed seeking a Mandamus declaring the action of the 4th respondent in issuing G.O.Rt.No.1103, Agriculture and Cooperation (Coop.V) Department, dated 24-10-2005 ordering postponement of elections to the Managing Committee of Balaji Cooperative Super Bazar Limited, Palamaner as arbitrary, illegal and contrary to Rule 22(1)(a) of the Andhra Pradesh Cooperative Societies Rules,1964 (for short 'the Rules') and to set aside the same.

Writ Petition No.907 of 2006 has been filed seeking a Mandamus declaring the Order of the 1st respondent in Rc.No.1073/2005C, dated 12-1-2006 as arbitrary and illegal and consequently to direct respondents to continue the elected Managing Committee presided over by the petitioner as the Person-in-charge committee of Balaji Cooperative Super Bazar Limited, Palamaner till the elected body takes over charge.

It appears that Government has issued G.O.Rt.No.1103, dated 24-10-2005 ordering postponement of elections to the Managing Committee of Balaji Cooperative Super Bazar Limited, Palamaner. The said G.O. is challenged on the ground that the Government has no

power to postpone elections to the Managing Committee of Balaji Cooperative Super Bazar Limited and the reasons furnished thereunder do not satisfy the ingredients of provisions of Rule 22 of the Rules. It is the case of the petitioner that the incumbent Managing Committee can itself conduct elections to the Society, which is not in receipt of State Aid as specified under Section 43 of the Andhra Pradesh Cooperative Societies Act,1964 (for short 'the Act'). The society in question being an unaided society, the General Body unanimously resolved to conduct elections on its own as per Rule 22 of the Rules. In fact, it was informed to the authorities on 5-10-2005 itself that the term of the present Managing Committee was expiring on 14-10-2005. The Deputy Registrar of Cooperative Societies, Madanapalle on 5-10-2005 issued proceedings appointing the existing Managing Committee of the Balaji Cooperative Super Bazar Limited, Palamaner to be the person-incharge committee for a period of 3 months or till elections are held, whichever is earlier. That being so, the impugned G.O. i.e. G.O.Rt.No.1103, dated 24-10-2005 was issued postponing the elections. However, subsequently, G.O.Rt.No.1129, dated 26-10-2005 was issued cancelling G.O.Rt.No.1103, dated 24-10-2005. By way of an interim order dated 27-10-2005 in W.P.M.P.No.29658 of 2005 in W.P.No.23113 of 2005, after an elaborate consideration, the Election Officer, who was appointed pursuant to the resolution dated 28-9-2005 passed by the General Body, was permitted to conduct elections as scheduled on 6-11-2005, but the results were directed not to be declared till the disposal of the Writ Petition. In the said Order, G.O.Rt.No.1130, dated 26-10-2005 was also taken note of.

Under G.O.Rt.No.1130, dated 26-10-2005, it was considered by the Government to be appropriate to postpone elections to Balaji

Cooperative Super Bazar Limited, Palamaner until further orders. In pursuance of the said G.O., Proceedings dated 12-1-2006 were issued by the Deputy Registrar of Cooperative Societies, Madanapalle appointing Officers as person-incharge committee to manage the affairs of Balaji Cooperative Super Bazar Limited, Palamaner for a period of 3 months or till the elections to the Managing Committee are held, whichever is earlier, purported to be in exercise of the powers under Section 32(7)(a) of the Act. While admitting Writ Petition No.907 of 2006, after hearing both parties and after an elaborate consideration of the matter, this Court passed an interim Order dated 12-1-2006 staying the operation of the said Order dated 12-1-2006.

In this backdrop, the only question that falls for consideration is whether Balaji Cooperative Super Bazar Limited, Palamaner, Chittoor District is a society receiving aid from the State as contemplated under Section 43 of the Act and whether the action of official respondents in postponing elections and appointing an official person-incharge committee is just and proper ?

It is the contention of the learned counsel for the petitioner that Balaji Cooperative Super Bazar Limited, Palamaner is an unaided society under the provisions of Section 43 of the Act read with Rule 22 of the Rules and the society itself can conduct elections by appointing an Election Officer by way of passing a resolution in the general body meeting. However, if any request is made by the society, the authorities may also consider for appointment of an Election Officer. In this case, there is no aid, even if received, pending payment as on the date of issuance of election notification. In fact, on an earlier occasion, when the Society has requested for appointment of an Election Officer, by a letter dated 13-10-2005 addressed by the Divisional Cooperative Officer, Madanapalle to the District Cooperative Officer, Chittoor, it was

stated that since Balaji Cooperative Super Bazar Limited, Palamaner is a non-state aid society, it can conduct elections by itself by way of calling for a general body meeting. Under those circumstances, the general body was called for and an Election Officer was appointed and the elections were conducted on 6-11-2005; however, the result could not be declared in view of the interim orders passed by this Court. Therefore, the appointment of person-incharge committee under the impugned letter dated 12-1-2006 of the 1st respondent has turned out to be a futile exercise, apart from being illegal. Therefore, the Writ Petitions are liable to be allowed.

A detailed counter affidavit is filed by the 3rd respondent denying various allegations made by the petitioner. It is asserted that Balaji Cooperative Super Bazar Limited, Palamaner is an aided society and the provisions of Section 43 of the Act read with Rule 22 of the Rules are attracted; therefore, the Society cannot appoint an Election Officer and conduct elections on its own. It is the prerogative of the State to appoint an Election Officer and conduct elections, since the society has received aid. In support of their contention, the 3rd respondent has filed G.O.Ms.No.129, Food and Agriculture (Coop.V) Department, dated 27-2-1991 whereunder the society was accorded sanction for incurring expenditure of Rs.4.02 lakhs for construction of Building and setting up of Large Sized Retail Outlet during the year 1990-91. Respondent No.3 also filed statements containing details of repayment of working capital loan and share capital contribution and margin money sanctioned to the Society.

A perusal of the statement of Share Capital from I.C.D.P. (material paper No.10 filed along with the counter) shows that even the share capital was cleared by the society by 6-7-2005 and ICDP loans against the society were cleared for the year 2001-2002. Thus, as on

the date of conducting general body and appointing an Election Officer, there were no dues payable by the society to the State. May be, it had received aid etc. Therefore, it cannot be said that the respondents have authority to appoint their own Election Officer in the guise of receiving aid by the society. In this regard, it may be necessary to notice the provisions under Sections 31 (2)(b) & (c), 43 of the Act, Rules 22 and 31(2)(b) of the Rules, which read as under:

"**Section 31. Constitution of Committees:-**

(1)……..

(2)(a) Save as otherwise provided in this Act, the term of office of the committee or any of its members or of the President elected in accordance with the provisions of sub-section (5) shall be five years from the date of election of the members of the committee:

Provided that……..

(b) It shall be the duty of the Registrar to hold elections to the office of the members of the committee of a society which received state aid as specified in Section 43 of the Act before the expiry of their term.

(c) in respect of other societies it shall be the responsibility of the incumbent committee of such society to hold elections to the office of the members of the committee in the manner specified in the byelaws before the expiry of the term:

Provided that where the committee of a society requests the Registrar to hold elections to the office of the members of the committee, the Registrar shall hold elections to the office of the members of the committee in the manner prescribed on payment of costs in advance.

Section 43. State aid to Societies:-

The Government may, subject to the rules,--

(a) give loans or advance moneys to the society;

(b) subscribe to the share capital of a society;

(c) provide moneys to a society—

(i) for the purchase of shares of other societies; or

(ii) to enable it to provide moneys to another society to purchase shares in other societies;

(d) guarantee the repayment of principal and payment of interest on debentures issued by a society;

(e) guarantee the repayment of share capital of a society

and dividends thereon at such rates as may be specified by the Government;

(f) guarantee the repayment of principal and payment of interest on loans and advance of moneys to a society;

(g) guarantee the repayment of deposits received by a society and payment of interest on such deposits subject to such terms and conditions as may be laid down by the Government; and

(h) give financial aid in any other form including subsidies to any society.

Rule 22. (1) Conduct of Elections to the Co-operative Societies:-

Notwithstanding anything in the bye-laws of the Societies election to the committee of all classes of Societies, shall be in the manner laid down in this rule.

(a) The incumbent Managing Committees shall themselves conduct and hold elections to societies which are not in receipt of State aid as specified under Section 43 of the Andhra Pradesh Cooperative Societies Act,1964 as per the procedures laid down in their bye-laws well before the expiry of the term of the existing Managing Committee. Such societies, if they so desire, may request the Registrar of Co-operative Societies to conduct elections in which case the Registrar of Cooperative Societies shall conduct the elections as per bye-laws and for which purpose the society shall pay the fee as prescribed in Rule 18 of the Andhra Pradesh Co-operative Societies Rules,1964.....

(b) In the case of societies that are in receipt of State aid as specified under Section 43 of the Act, the Registrar shall hold elections to them before the expiry of their term of the committee subject to the provisions in these rules and regulations that the Government may make from time to time.

Section 43 of the Act contemplates State aid to the societies. There is no dispute that the society in question has received aid from the State. Rule 22(1)(b) contemplates appointment of an Election Officer for the purpose of holding elections before the expiry of the term of office of Managing Committee, by the Registrar, in case of societies

that are in receipt of State aid as specified in Section 43 of the Act. Under Rule 22(1)(a), wherever the aid is not received, the general body of the society, itself, can appoint an Election Officer, for conducting elections. It shall be the duty of the Registrar to hold elections to the members of the society, which received State aid as specified in Section 43 of the Act before expiry of their term. Whereas, clause (c) of Section 31(2) of the Act contemplates that in respect of other societies, which are not in receipt of State aid, it shall be the responsibility of the incumbent committee of such society to hold elections to the Office of members of the Committee, in the manner specified in bye-laws, before expiry of the term.

From a combined reading of Clauses (b) and (c) of Section 31(2) of the Act, it would emerge that the Registrar shall hold elections to the Office of the members of the committee of a society, which **received State aid** as specified in Section 43 of the Act **before expiry of the term.** That means, when a society has received aid and already redeemed the same before expiry of the term of the Managing Committee, the society can be said to be 'other society' and it shall be the responsibility of the incumbent committee of such society to hold elections before expiry of the term in the manner specified in the bye-laws of the society. In the instant case, admittedly, as on the date of expiry of the term of office of the Managing Committee of the Society i.e., 14-10-2005, there was no aid, which was received by the society, remains to be paid, either in full or in part. Therefore, it cannot be said that the society is in receipt of the aid as on the date of expiry of the term. The entire share capital and ICDP loan were redeemed even before the expiry of the term of Office of the committee. As such, the incumbent Managing Committee has every right to conduct its own elections by getting an Election Officer appointed by the general body,

which was rightly done in the present case and the same was sought to be throttled by the Government by issuing the impugned G.O. in G.O.Rt.No.1103, which was, of course, cancelled under G.O.Rt.No.1129, dated 26-10-2005, but issued another Governmental Order in G.O.Rt.No.1130, dated 26-10-2005.

In the instant cases, as per the general body meeting conducted on 28-9-2005, an Election Officer was appointed and elections were already conducted on 6-11-2005. I am of the opinion that even issuance of G.O.Rt.No.1130, dated 26-10-2005 is unwarranted in the facts and circumstances of the case, apart from being illegal, since it was issued by the Government assuming that the society is in receipt of aid. As stated above, G.O.Rt.No.1103, dated 24-10-2005 has already been cancelled by way of issuing G.O.Rt.No.1129, dated 26-10-2005. Through the present G.O. i.e. G.O.Rt.No.1130, dated 26-10-2005, though the elections are sought to be postponed, in view of the interim orders passed by this Court, the elections were already held on 6-11-2005. In G.O.Rt.No.1130, dated 26-10-2005 no serious irregularities have been shown to attract Rule 22 of the Rules for postponing the elections sought to be conducted by the Society itself. Thus, G.O.Rt.No.1130, dated 26-10-2005 and the letter dated 12-1-12006 of the 1st respondent in Writ Petition No.907 of 2006 are liable to be set aside and are accordingly set aside. Respondent-Election Officer shall declare the results of the elections conducted on 6-11-2005, within a period of three (3) days from the date of receipt of a copy of this Order. However, this will not preclude any aggrieved party from filing an Election Petition as soon as the election results are declared, if there are any irregularities committed in conducting elections.

The Writ Petitions are, therefore, allowed. No order as to costs.

30-10-2006

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